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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR          | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-------------------------------|---------------------|------------------|
| 10/612,601      | 07/01/2003  | Charles Frederick Schroer JR. | 9128-023-999        | 4815             |

32172 7590 10/04/2005

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EXAMINER

REICHLER, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/612,601 | <b>Applicant(s)</b><br>SCHROER ET AL. |  |
|                              | <b>Examiner</b><br>Karin M. Reichle  | <b>Art Unit</b><br>3761               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7-8-05 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7-8-05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

#### ***Drawings***

1. The drawings were received on 7-8-05. These drawings are approved by the examiner.

#### ***Description***

2. The abstract of the disclosure is objected to because on line 2, "of" should be deleted. Also the amended abstract filed 7-8-05 does not comply with 37 CFR 1.121 because the paragraph number does not appear on the first line nor is such shown struck through. Any further response should provide a compliant abstract. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

3. Claims 1-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to language added to claim 1, last section, it is unclear what structure Applicant is claiming because such language sets forth that both cuffs and the backsheet extend past "a lateral edge", i.e. one lateral edge of the barrier layer, but terminate at the lateral side edges, i.e. both side edges. How do both cuffs extend past one of the edges? How do both cuffs each

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extend to both side edges? A clear description of the cuffs and backsheet with regard to the side edge(s) of the barrier layer and absorbent article should be set forth. This also applies to the claim language added to the other independent claims.

### ***Claim Language Interpretation***

4. Other than the terminology explicitly defined in paragraphs 25-29, the claim terminology will be given its ordinary, i.e. dictionary, definition. Due to the lack of clarity set forth in the preceding paragraph, the claim language added to the independent claims will be interpreted as requiring the backsheet to extend beyond side edges of the barrier layer and terminate at the side edges of the article and each barrier cuff to extend past a respective one of the side edges and terminated at a respective one of the lateral side edges of the article.

### ***Claim Rejections - 35 USC § 102/103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-48 are rejected under 35 U.S.C. 103(a) as obvious over Saisaka et al '424 in view of Igaue et al '251, Lawson '246 and Foreman '677.

Claims 1, 3 and 12-15: See Figures, especially Figures 1-5, col. 3, lines 40-47, col. 4, lines 23 et seq, note especially line 65, col. 5, lines 3-9, 19-22, 25-28, 59-66, col. 6, lines 1-19, note especially col. 6, lines 1-2, 6-7 and 10-12 as well as the definition of "pervious" in paragraph 26 of the instant specification, i.e. the flaps can have only nonwoven material portions, i.e. flaps are "pervious", col. 6, lines 27-45, col. 7, lines 4 et seq, col. 9, line 39-col. 10, line 65,

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i.e. the article is 1, the liquid pervious hydrophobic backsheet is 21, the liquid pervious top sheet is 14, the liquid pervious hydrophobic barrier cuffs are 17, the core is 15 and can be of rectangular shape, the liquid impervious barrier layer is 13, the leg elastic members are 27 and the barrier layer, topsheet and core are not present in the portions of the article where the leg elastics are located, i.e. located laterally inboard of such, narrower than the elastic separation distance, and the barrier layer does not wrap around the core.

Claims 2, 4, 6-10, 14, and 16: see Figures, i.e. the ends of the barrier layer are coextensive with those of the article but the ends of the core are not, and discussion of claims 1, 3, and 12-15.

Claim 5: see Figure 5, the bonding point is adjacent 16.

Claims 17-25 and 27-31: see discussion of claims 1-10 and 12-16 supra. Also, with regard to the topsheet, see definition of “hydrophilic” in the instant specification and col. 5, lines 18-21 of Saisaka, i.e. the topsheet is liquid permeable, i.e. accepts fluid, i.e. is “hydrophilic”.

Claim 11: See portions of Saisaka cited supra, i.e. breathable, i.e. moisture permeable, crotch region and Figure 5, i.e. the portion of the crotch region where the leg elastics are but the barrier layer is not located does not include as many layers, including the core, as other portions of the article. Applicant claims such crotch region portion has the property of reduced stiffness. It is noted that the claim does not recite what the portion is “reduced” with respect to, i.e. the remainder of the article? A portion of the remainder? Saisaka et al, while not specifically teaching the breathable leg elastic containing portion has “reduced” stiffness, teaches that such portion does not include as many layers, including the core, as other portions of the article. Therefore, it would be obvious to one of ordinary skill in the art that such crotch region would

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necessarily and inevitably include such property of “reduced” stiffness compared to other portions of the article including more and/or thicker layers such as the core.

Claims 26, 32 and 36-48: see discussion of claims 1-25 and 27-31 *supra*.

Claims 33-35: The breathable zones of obvious “reduced” stiffness comprise portions of the absorbent article, e.g. element 21, which do not “encompass”, i.e. defined as “to include or comprise”, any liquid impervious or hydrophilic material, i.e. element 21 can be a water or liquid permeable, hydrophobic material.

Claims 1-48: As seen in the Figures the Saisaka et al device also includes a back sheet which extends past the lateral edges of the barrier layer 13 and terminates at the side edges of the barrier layer and barrier cuffs which extend past a respective side edge of the barrier layer, see Claim Language Interpretation section *supra*. Therefore, Saisaka includes or obviously include all the claimed structure except for that set forth in the language added to the independent claims with regard to the cuffs terminating at the side edges of the article, as best understood, see Claim Language Interpretation section *supra*. Saisaka shows the cuffs terminating at the point where they extend past the respective side edge of the barrier layer, i.e. the portion of the cuff attached is turned inwardly. Saisaka does not disclose any criticality with regard to such structure, see portions cited *supra*. Furthermore, note Figures 7, 13, and 8-9 and col. 11, lines 35-37 and col. 11, line 454-col. 12, line 24, especially col. 12, lines 22-24. Furthermore, see Igaue et al, ‘251 at Figures 14, i.e. portion of cuff attached is turned inwardly, 13, i.e. the portion of the cuff attached is turned outwardly, and 6, i.e. the portion of the cuff attached is turned outwardly and extends to the respective lateral edge of the article, Lawson ‘246 at Figures 7, i.e. the cuff is formed of the topsheet, and 3, i.e. the cuff is separate from the topsheet with the portion of the cuff attached

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turned outwardly, and Foreman at Figure 2, i.e. the portion of the cuff attached is turned outwardly and extends to the respective lateral edge of the article, and col. 13, lines 36-64, i.e. the cuff is formed of the topsheet, i.e. the prior art teaches interchangeability of a cuff as claimed for that such as taught by Saisaka. Therefore, to make the cuff of Saisaka a cuff which terminates at the side edge of the article as claimed, as best understood, would be obvious in view of the interchangeability as by Igaue et al, Lawson and Foreman.

### ***Response to Arguments***

7. Applicants 7-8-05 arguments have been considered but are deemed moot in that the issues discussed has not been repeated.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

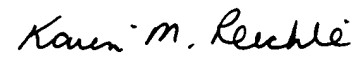
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Any new grounds of rejection were necessitated by the language added to the independent claims.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
September 25, 2005